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Attorney for Plaintiff
GLEN R. HAGEN

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GLEN R. HAGEN, Plaintiff, v. NCR CORPORATION, Defendant.	Case No.: 07 CV 2205 DMS (CAB) **AFFIDAVIT OF THOMAS R. GILL, ESQ., IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION TO CONTINUE EXPERT DESIGNATION AND RELATED DATES** **[FRCP 26(a)(2)(C)]** Date: Time: Judge: Hon. Cathy Ann Bencivengo Trial Date: May 9, 2009, 9:00 a.m.

I, THOMAS R. GILL, ESQ., have personal knowledge of the following facts, and if called upon could competently testify to the following:

1. On June 20, 2008, I began seeking a stipulation with Miles Scully, Esq., lead defense counsel, to effect an extension of dates to designate experts. Mr. Scully has recently indicated Defendant has “no interest in changing the dates”.

2. Plaintiff could not meet the June 17th deadline for two main reasons. The first was the time required to establish a guardianship, which was effected May 5, 2008, whereby Plaintiff's

wife, Carmen Hagen, was formally appointment guardian *ad litem*. Therefore, as Plaintiff's counsel, I did not have authority to proceed with selecting an expert until Ms. Hagen was appointed guardian.

3. However, the overriding concern has been the significant difficulty finding a forensic expert neuropsychiatrist and/or neurologist specializing in dementia/Alzheimer's Disease. This includes using expert witness search services. A couple of potential experts indicated interest, but conceded their specialty is not with serving the interests of individuals with dementia/Alzheimer's.

4. Mr. Scully and I have discussed and agreed a central issue in this matter is whether or not Plaintiff was able, based upon his medical condition, to perform the essential functions of his position at the time of his termination, March 10, 2006. The determination of this question necessarily involves a forensic medical expert capable of making such an assessment.

5. There has been no prior request for a continuance or extension of any date set forth in the Case Management Conference Order dated March 19, 2008.

6. No prejudice has been indicated nor do I foresee any prejudice that could accrue to Defendant should the expert designation date be extended.

7. Thank you for your attention to this matter.

I declare under penalty of perjury under the laws of the United States the foregoing is true and correct and that this affidavit was executed on this 1st day of July, 2008, at San Diego, California.

s/ Thomas R. Gill, Esq.
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